

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

VICTOR M. GONZALEZ  
VAZQUEZ,

Defendant.

CASE NO. CR10-00324 RAJ

ORDER

This matter comes before the Court on Defendant Victor M. Gonzalez Vazquez's ("Defendant") Motion for Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c)(2). Dkt. # 127. For the following reasons, the Court **GRANTS IN PART** Defendant's Motion.

**I. BACKGROUND**

On April 13, 2011, Defendant was found guilty by a jury of possession with intent to distribute methamphetamine and sentenced to 144 months imprisonment. Dkt. ## 83, 84, 90. On July 8, 2011, Defendant was sentenced to 144 months imprisonment. Dkt. # 89. At the sentencing hearing, the Court adjusted Defendant's base offense level was 36 (upwardly adjusted two levels due to a finding of perjury) with a criminal history level of

1 II. Dkt. # 98. The applicable guideline calculation suggested a sentencing range of 210-  
2 262 months of imprisonment. *Id.* The Court imposed a sentence below the applicable  
3 sentencing range based on 18 U.S.C. § 3553(a) factors. Dkt. ## 89, 98 at 13-16.

4 Defendant appealed his conviction and sentence, and the Ninth Circuit affirmed  
5 Defendant's conviction but vacated the sentence and remanded for resentencing. Dkt. #  
6 106. On November 8, 2013, the Court again imposed a sentence of 144 months. Dkt. ##  
7 118, 123. The Court then found that Defendant again had a base offense level of 34, after  
8 a two-level upward adjustment for obstruction of justice, and a two-level reduction for  
9 safety valve, resulting in a criminal history category of I and a range of 151-188 months.  
10 Dkt. # 123 at 20-25. During these proceedings, Defendant presented his drug addiction  
11 as one of several mitigating circumstances. *Id.* At the time, the Court, considering the  
12 entire record before it, determined that reimposing the below-guidelines 144 month  
13 sentence was reasonable, sufficient, but no more than necessary to carry out the  
14 objectives of the sentence. *Id.* at 24.

15 Defendant now moves to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2).  
16 Dkt. # 127. Defendant contends that he is entitled to a sentence reduction based on  
17 Amendment 782 to the United States Sentencing Guidelines ("USSG"), based in large  
18 part on his previous drug addiction and positive post-sentencing behavior. The  
19 Government agrees that Defendant is eligible for a reduction, but opposes any such  
20 reduction. Dkt. # 130. Defendant has not filed a reply to the Government's response.

## 21 **II. DISCUSSION**

22 As an initial matter, the Court must determine whether Defendant is eligible for a  
23 sentence reduction. On April 30, 2014, the Sentencing Commission promulgated  
24 Amendment 782, revising the Drug Quantity Table and chemical quality tables, which  
25 amended the guideline ranges for crimes involving narcotics. On July 18, 2014, the  
26 Sentencing Commission voted to make Amendment 782 retroactively applicable to  
27 previously sentenced prisoners, and the amendment became effective on November 1,

1 2014. Thus, under 18 U.S.C. § 3582(c)(2), previously sentenced prisoners may move to  
2 modify their sentences on the basis of the amendment. 18 U.S.C. § 3582(c)(2) allows for  
3 a defendant to move to reduce a term of imprisonment when that term is based on a  
4 sentencing range that has been subsequently lowered by the Sentencing Commission.

5 For a defendant to qualify for a sentence reduction under 18 U.S.C. § 3582(c)(2),  
6 two conditions are necessary: “(1) the defendant must have been sentenced to a term of  
7 imprisonment based on a sentencing range that has been lowered by a retroactively  
8 applicable Guidelines amendment; and (2) the sentence reduction sought must be  
9 consistent with the Sentencing Commission’s applicable policy statements.” *United*  
10 *States v. Zapata*, No. CR07-0343-JLR, 2016 WL 7336159, at \*1 (W.D. Wash. Feb. 8,  
11 2016) (citing *United States v. Waters*, 771 F.3d 679, 680 (9th Cir. 2014) (per curiam));  
12 *see also Dillon v. United States*, 560 U.S. 817 (2010). The Court lacks jurisdiction to  
13 reduce a defendant’s sentence if either of these conditions are not met. *United States v.*  
14 *Wesson*, 583 F.3d 728, 730 (9th Cir. 2009).

15 Here, both parties agree that Mr. Gonzalez Vazquez is eligible for a retroactive  
16 sentencing reduction, and that the Court has discretion to lower Mr. Gonzalez Vazquez’s  
17 sentence from 144 months to 121 months. Dkt. ## 127 at 2; 130 at 4-7. Defendant’s  
18 current sentence is based on a drug quantity of 420.7 grams of methamphetamine. Under  
19 Amendment 782, the base offense level corresponding to that drug quantity was reduced  
20 by 2 levels from 34 to 32. Consequently, Mr. Vazquez’s adjusted offense level, which is  
21 currently 34, is reduced by two levels to 32. Mr. Vazquez’s criminal history category is  
22 I. Previously, Defendant’s sentencing range was 151-188 months; the new sentencing,  
23 based on Defendant’s reduced offense level and criminal history category, is 121-151  
24 months. The Court accordingly has discretion to reduce Defendant’s sentence to 121  
25 months, but no lower. USSG § 1B1.10(b)(2)(A); *United States v. Davis*, 739 F. 3d 1222,  
26 1224 (9th Cir. 2014).

27 Turning to the next step, Application note 1(B) to USSG § 1B1.10 directs that

1 subject to the limits set forth in USSG § 1B1.10(b), the Court may consider all pertinent  
2 information in applying the § 3553(a) factors and determining whether and by how much  
3 to reduce Defendant's sentence. In particular, Application note 1(B)(ii) directs that the  
4 Court must consider "the nature and seriousness of the danger to any person or the  
5 community that may be posed by a reduction in the defendant's term of imprisonment."  
6 Application note 1(B)(iii) further directs that "[t]he court may consider post-sentencing  
7 conduct of the defendant that occurred after the imposition of the original term of  
8 imprisonment."

9 In reviewing the record before it, the Court commends Defendant's efforts to  
10 further his education and to take steps toward rehabilitation. The Court notes that  
11 Defendant has successfully completed his GED and has kept a clean disciplinary record  
12 for multiple years. Dkt. # 127-1 at 10-17. Defendant has also apparently rebuffed some  
13 attempts by other inmates to rejoin the drug trade while in prison, and cooperated with  
14 prison officials. Dkt. # 127-1 at 11. Previously, this Court noted that Defendant's lack of  
15 gainful employment indicated that he had very little meaningful work experience outside  
16 of dealing drugs. Dkt. # 98 at 13; Dkt. # 123 at 22. These recent efforts suggest that  
17 Defendant is taking small, but potentially meaningful, steps to extricate himself from the  
18 drug trade. The Court believes these efforts may in turn deserve a small reduction in  
19 Defendant's sentence.

20 However, the Court declines to grant Defendant's requested reduction in full.  
21 Defendant committed a very serious crime, and Defendant's Motion primarily relies on  
22 the same addiction and background-based arguments that the Court has already seen.  
23 The Court had already considered Defendant's addiction and family situation in previous  
24 sentencings and sees no need to revisit those findings. Dkt. # 98 at 13-15. The Court  
25 reaffirms its prior determination that Defendant turned his back on a relatively favorable  
26 family situation and had a level of involvement in the drug trade that extended far beyond  
27 mere use. The Court still believe that his previous actions endangered himself, his

1 family, and the public.

2 The Court twice imposed a 144 month sentence that it believed, based on the  
3 record before it, would promote respect for the law, provide just punishment, provide  
4 adequate deterrence, and protect the public. Although Defendant presents some new  
5 evidence of post-sentencing conduct, this new evidence largely does not change the  
6 reasons the Court previously gave for the appropriateness of the 144 month sentence.  
7 Moreover, as the Government notes, the 144 month sentence is well within the new  
8 sentencing range of 121-151 months. Dkt. # 13 at 13. Despite the recent evidence of  
9 good behavior, the record still indicates that despite his drug addiction, Defendant was  
10 deeply involved in the trade of a highly dangerous and destructive narcotic.

11 After reviewing and considering Defendant's crime, the original sentences, the  
12 factors under § 3553(a), public safety considerations, and Defendant's post-sentencing  
13 conduct, the Court reduces Defendant's sentence from 144 months to 140 months. In  
14 doing so, the Court takes into account the positive steps Defendant has taken and his  
15 disciplinary record since he has been in custody, but ultimately is mindful of the  
16 seriousness of the crime and Defendant's previously heavy involvement in the drug trade.

### 17 **III. CONCLUSION**

18 For the reasons stated above, the Court **GRANTS IN PART** Defendant's Motion  
19 for Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c)(2). Defendant's sentence is  
20 reduced from 144 months to 140 months.

21  
22 Dated this 6th day of July, 2018.

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25 The Honorable Richard A. Jones  
26 United States District Judge  
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